

Approved as Submitted: November 15, 2006

**CITY OF MORGAN HILL
SPECIAL CITY COUNCIL AND
SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES – NOVEMBER 8, 2006**

CALL TO ORDER

Mayor/Chairman Kennedy called the meeting to order at 6:00 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Grzan, Tate and Mayor/Chairman Kennedy
Late: Council Member Sellers (arrived at 6:15 p.m.) and Council/Agency Member Carr (arrived at 6:50 p.m.)

DECLARATION OF POSTING OF AGENDA

Municipal Services Assistant Rice certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council and Redevelopment Agency Action

CLOSED SESSION:

City Attorney/Agency Counsel Kern announced the below listed closed session item.

1.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION:

Authority:	Pursuant to Government Code 54956.9(a)
Case Name:	Tichinin v. City of Morgan Hill
Case Number:	Santa Clara County Superior Court, Case No. 1-05-CV-046112
Attendees:	City Manager; City Attorney; Special Counsel Timothy J. Schmal

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairman Kennedy opened the closed session item to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairman Kennedy adjourned the meeting to closed session at 6:03 p.m.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 7:00 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Kern announced that no reportable action was taken in closed session.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

PROCLAMATIONS

RECOGNITIONS

CITY COUNCIL REPORT

Council Member Tate indicated that he is the Council's representative to the Library Joint Powers Authority. He said that Morgan Hill's library was ranked number 2 last year for libraries of its size after being ranked number 1 for the prior 5 consecutive years. He reported that the Morgan Hill Library is once again in the number 1 position in library systems of its size in the nation. He thanked the citizens of Morgan Hill for their support, and in electing him to be the City's mayor. He congratulated each candidate that ran for mayor and Council; specifically for their positive behavior during the entire election process. He noted that you read about campaigns in other areas where elections got heated, and that he was pleased that this did not occur in Morgan Hill as every candidate behaved extremely well with no personal attacks taking place. He felt that each candidate ran because each thought they could do what is best for Morgan Hill. It was his hope that the candidates who were not successful in this election would get involved in committee work, and that citizens will see them run for office in future elections. He indicated that he spent the greater part of the day taking down his signs. He noticed that most of the other candidates also took their signs down. He stated that he does not like signs or the clutter of signs. Therefore, to see the signs come down after an election is rewarding. He acknowledged and thanked Mayor Kennedy for his leadership on the City Council; noting that he has been the Mayor for the City of Morgan Hill for the past 11 years, and that the City is in his debt. He said that the Council will be talking to Mayor Kennedy about keeping him involved in activities and in helping the City. He said that for the next couple of years, he will be benefiting from Mayor Kennedy's initiatives as they will be coming to fruition. As his initiatives kick in, he will be at the end of his term. He indicated that he would be suggesting the Council look at the mayor's seat in order to determine whether it is the correct length of term. He noted that there has been a lot of talk about open government and having business be as transparent as possible. He felt that under Mayor Kennedy's and the Council's leadership, the City has always been open and receptive to suggestions. He indicated that all Council members are accessible, and encouraged anyone who has thoughts on what the Council is doing/not doing right, and/or changes it would like to see, that individuals get their opinions/suggestions to the Council so that they can be acted upon. He indicated that the Council will be conducting its annual goal setting retreat at the end of January 2007 and that this will be the time to set the direction. He stated that the Council values citizen input.

CITY COUNCIL COMMITTEE REPORTS

None.

CITY MANAGER'S REPORT

City Manager Tewes congratulated Mayor Elect Tate, re-elected Council Member Sellers and Council Member Elect Marby Lee. He informed the community that the new council will be seated, and that their first meeting will be held on December 6, 2006. He indicated that it is the responsibility of the Registrar of Voter's Office (ROV) to check all votes, and to deal with any provisional ballots, as well as any challenges that may arise. He indicated that the ROV has 30 days to certify the election results, and that staff is confident that at the first Wednesday Council meeting in December, staff will be ready to proceed with certification of the election results. He stated that a reception will be conducted for the outgoing and incoming Mayor & Council member that evening, during the Council meeting.

CITY ATTORNEY'S REPORT

City Attorney Kern stated that she did not have a report to present this evening.

OTHER REPORTS

Mayor Kennedy indicated that the City has a delegation from its Sister City from Japan visiting Morgan Hill. The delegation arrived yesterday and has taken a tour of the Centennial Recreation Center, Community Center, Aquatics Center, and the new police station. He stated that the Mayor from the City's Sister City of Mizuho Town, Japan presented him with a gift that he displayed. He indicated that the Japanese delegation is having a wonderful tour, and that they will be in Morgan Hill the rest of the week.

PUBLIC COMMENT

Mayor/Chairman Kennedy opened the floor to public comment for items not appearing on this evening's agenda.

Council Member Sellers thanked everyone for a great election. He stated that he was excited about serving a third-term. He said that in doing research for the City's centennial, the City Clerk came up with a list of individuals who have served on the council. He indicated that it is rare for someone to serve more than two-terms on the Council, and that it is humbling for him to be allowed to serve a third-term. He is excited about the opportunity to serve with Mayor Elect Tate and is looking forward to having a new member on the City Council. He was cognizant of the fact that the Council will have big shoes to fill, as Mayor Kennedy has done a tremendous job in one of the most active periods in the last 100 years of Morgan Hill history. He said that the Council understands it will be up to them to try and continue this tradition.

City Council Action and Redevelopment Agency Action

PUBLIC HEARINGS:

1. REDEVELOPMENT PLAN AMENDMENTS NO. 4 and NO. 5 AND THE FINAL PROGRAM ENVIRONMENTAL IMPACT REPORT (EIR)

Director of Business Assistance & Housing Services Toy indicated that the item before the Council/Redevelopment Agency (RDA) is the Redevelopment Plan amendment with a series of actions for both bodies to consider this evening: 1) The RDA needs to transmit the report to the Council on the Plan Amendment; 2) conduct a joint Council/Agency public hearing; 3) RDA and Council to certify the final EIR; and 4) consider two plan amendments – Plan Amendment No. 4 and Plan Amendment No. 5. He indicated that Plan Amendment No. 5 deals with the issue of eminent domain. Given the level of public scrutiny related to the reauthorization of eminent domain for limited non residential purposes/areas, staff felt it would be appropriate to separate this amendment. Should the Council decide not to move forward with eminent domain, it would not be necessary to revise Amendment No. 4; assuming there are no other changes identified. He stated that Amendment No. 4 contains a couple of provisions: 1) deletion of territory; 2) reauthorization of bonding, setting a maximum limit; and 3) an increase in the tax increment limit. These are all items for Council/Agency to decide upon this evening. He informed the Council/Agency Board that staff has provided it with a preliminary report, a report sent to taxing agencies. The preliminary report contains details about the plan amendment. Also, provided to the Council/Agency Board is the comprehensive document that takes a look and summarizes all of the results of the plan amendment process, community outreach, and responses from taxing agencies. The binder also contains the draft and final EIR, and Plan Amendment Nos. 4 and 5. He informed the Council that staff attached the Planning Commission report relating to the final EIR, and detachment area maps, the four written objections received primarily relating to the eminent domain provisions, and the notes from the community outreach meeting as part of the staff report.

Director of Business Assistance & Housing Services Toy informed the Council that four community outreach sessions were held and the notes from these meetings have been forwarded to the Council/RDA: August 21, October 10, October 25 (sponsored by El Toro Youth Center), and October 30 (sponsored by the Morgan Hill Chamber of Commerce and the Morgan Hill Downtown Association). Regarding the Plan Amendment, he indicated that there was primary focus on eminent domain. He stated that the City has been talking about the amendment and the process timeline for some time. He identified the steps/dates relating to the plan amendment. He indicated that the Plan amendment process timeline includes the three planning commission meetings held to discuss the plan amendment and the EIR. He identified the actions needed to proceed with the RDA Plan amendment: 1) Agency/Council to certify the final EIR; 2) Select a recommended detachment area, (map 2 of Chapter 6 of the report to Council). He informed the Council/Agency Board that the Community & Economic Development Committee has reviewed this information, and also recommends this detachment area. 3) Evaluate the tax increment limit of \$333 million; 4) Consider the re-authorization of bonding and the maximum bonding being proposed; and 5) Amendment No. 5 – the re-authorization of eminent domain for non residential areas located in specific areas of town. Following consideration to these items, staff

recommends the Council introduce any ordinances with modifications, as deemed appropriate. He informed the Council/Agency Board that GRC Associates, the consulting firm who prepared the EIR and the Redevelopment Plan, would make a presentation on the final EIR, the report to the Council and the presentation of the Plan Amendment. The Council/Agency Board can ask questions. Following the questions, the City Attorney/Agency Counsel will be asked to summarize all actions to be taken this evening; followed by the public hearing, and taking any action deemed appropriate based on the public hearings and all materials before the Council/Agency Board.

Ernie Glover, GRC Redevelopment Consultants, indicated that he has been assisting the City in preparing the proposed Plan amendment from a technical standpoint. He addressed the process, the program, the EIR, the report to the City Council, and the major plan elements.

Mr. Glover addressed the project area, indicating that the area consists of 2,800 acres. He stated that as plans mature and goes into the mid period of their lives, several technical amendments are made. He indicated that the project plan area has been successful from a monetary standpoint. He said that you need to look at the financial limits placed on the Plan because the Agency will run out of its financial authority in January 2008; well before the time the Plan would lapse. However, there is a lot more work necessary throughout the community that has been attempted to be documented in the report to the Council/Agency Board. He stated that without these expanded authorities, the Agency and the City would not be able to address most of the problems. He indicated that there are numerous projects authorized in the Plan that would address most of the issues; some being carried over from the original Plan and from the existing implementation plan (five year detailed program for implementing the redevelopment project). Further, new projects have been added and existing projects refined.

Mr. Glover indicated that as a part of any major redevelopment planning program, an agency is required to prepare an EIR. In this case, a programmatic EIR was prepared. He clarified that the City is not looking at specific projects, but looking at the overall impact of the program on future development of the City. Therefore, the document looks at cumulative affects of implementing the redevelopment plan and the general plan in the project area. He stated that several mitigation measures were required relative to traffic and noise. They are listed in the plan and contained in the EIR, and are specifically addressed in the mitigation monitoring plan that outlines how the mitigation measures would be implemented over time. However, air quality was found to be an unavoidable adverse impact. Even after the City implements the mitigation measures in the EIR, there will still be negative impacts which will have to be overridden by the Council/Agency Board as part of its action. He stated that the overriding statements are included in the resolutions before the Council/Agency Board this evening.

Mr. Glover informed the Council/Agency Board that a number of written and oral comments were received from the County, taxing agencies, and members of the Planning Commission. He indicated that these comments were responded to both in writing and verbally. However, none of the comments required changes to the EIR or redistribution of the product. He clarified that the EIR, in this case, did not look at financing, but looked at the physical affects of the implementation plan and the redevelopment program. He indicated that the report to Council contains a number of chapters that look at the financial affects of implementing the program. This information can be found in the last chapters of the report to the City Council, and not in the EIR document.

Mr. Glover informed the Council/Agency Board that the report to the Council does a number of things besides looking at the financial impacts. The report looks at remaining blight. Should the Council/Agency Board decide to move forward, the ordinance to be adopted this evening states that there is significant remaining blight within the community that would justify extending the limits. Further, the report to the Council draws a nexus between the programs proposed in the Plan and the elimination of the blighted conditions.

Mr. Glover stated that community outreach meetings were documented via notes/minutes. He informed the Council that approximately 30,000 mailers were mailed out at one point or another during the program review. It is felt that the City reached out as much as possible. Further, there were discussions with other taxing entities such as the School District, the County, the Resource Conservation District, and the other Districts that share in the property tax dollars. Comments were received by these taxing agencies on the Plan. He stated that it was generally universally received favorable, without comment. Incorporated into the document were the Planning Commission's review and comments on the proposed Plan amendment. At the end, a draft amended and restated Redevelopment Plan was produced. He stated that this document is functionally the same document the City has had in place since the project area was first adopted. The document was modernized and included change in language.

Mr. Glover addressed proposed Amendment No. 4; indicating that it would extend the financial limits, updates the list of improvements contained within the plan, and would detach some areas no longer in need of redevelopment that can go back to other taxing entities. Doing so would provide boosts to the taxing agencies' budgets as well as the City's general fund. He further addressed the five changes being proposed: 1) repeal the limit on debt incurrence; 2) extend the effectiveness of the plan from 2021 through 2024 based on the City voluntarily agreeing to give to the State the Educational Resource Augment Fund (ERAF) last year; 3) receipt of tax increments would be extended from 2031 through 2034 as part of the ERAF amendments; 4) an increase in the bonding capacity of the plan or the limit on the maximum limit of principal/bonds, and 5) a tax increment increase. He indicated that the bond principal limit has lapsed and that there is no limit. Technically, it was \$7 million lapsing seven years ago. He stated that it is proposed to raise this amount to \$150 million outstanding at any given time. The tax increment limit would go from the current \$247,000 to \$580 million. He stated that these sound like big numbers, but that he was conservative in projecting these numbers based upon real analysis; including leveraging the City's current tax increments, or the value of future tax increments by borrowing against it. He indicated that the project list that could be affected by bonding or the increase in the tax increment capacity for the economic revitalization programs, street and circulation improvements, flood control improvements, water/sewer improvements, public facility improvements, and affordable housing. Adding the costs for all identified needs resulted in \$229 million needed to meet current and reasonably anticipated future needs. He indicated that most of these are unfunded needs. Therefore, the cost for the total project is at \$229 million. Inflation will add another \$66 million. Interest on bonds would add another \$44 million to the project; administrative costs would add approximately \$46 million, and would add the tax increment funding already received of \$194 million. You would have a total project cost from the 1980s up to \$580 million; hence, the number for the future limit on tax increment. He stated that this is essentially a \$33 million increase over the current limit. He indicated that it is not uncommon to run into these situations, mid term through a Plan's life. Therefore, an agency has to make a decision to raise the cap or abandon the project.

Mr. Glover stated that the \$150 million bond limit may sound like a lot of money; however, it only represents approximately one half of the total project cost. The assumption all along, in developing the bond limit, was to state that half of the projects completed are to be on a pay as you go basis and that the remaining half would be completed through borrowing against future tax increment flows. He said that the \$150 million is the maximum theoretical limit, and that an agency cannot go above this amount in debt at any one time. What sets the amount an agency can borrow is the current tax increment flow. He indicated that bond underwriters will tell an agency how much it can borrow. He said that it was the idea to be conservative in setting limits, but to give the Agency as much financing flexibility as possible in order to undertake larger projects. He pointed out that sometimes it is thought that you can save the money and then construct the projects in the future; avoiding to pay interest at 5%. Unfortunately, especially with cement and concrete, inflation is between 6%-8%. Should an agency not proceed with a project at this time, the agency would be paying a higher rate of interest; paying more money to save up to build a project than it would have cost the agency to build the project at this time.

Mr. Glover indicated that another major element is the detachment of approximately 575 acres. These are areas that are predominantly essentially finished in their redevelopment program and are up to standard. These properties could be detached without hurting the program, overall. This would result in the tax increment flow from these properties going back to the general fund of the County, the City, and other taxing agencies. He said that Cochrane Plaza was going to be recommended for detachment, but that since then, it has come to be understood that the status of Cochrane Plaza is changing as it may be loosing a major tenant. In this case, Cochrane Plaza could start going downhill very quickly in terms of the quality of the tenants, maintenance, and its contribution to the City. It was felt that it would be best to adjust the detachment area to keep the Cochrane Plaza in the redevelopment plan area. This would give the City and the Redevelopment Agency more flexibility to respond.

Mr. Glover addressed the financial benefits of taking territories out of a project area. He said that the City has an unusual luxury because it does not have any kind of current debt that would necessitate keeping this land in the project area. Therefore, the City can move this area out of the project area at will. He said that tax increments, without detachment attributable to County money, equates to approximately \$2.8 million. The City would return \$1.1 million to the County and retain approximately \$1.7 million with the new boundaries. He stated that the City's general fund would benefit. He said that the amount of tax increment attributable to the City's general fund is approximately \$2.3 million. Approximately \$860,000 would be returned to the City's general fund; leaving approximately \$1.5 million for the Agency to work with.

Mr. Glover addressed the ERAF; indicating that this money goes to the School District and is a contribution from the general fund of other taxing agencies. Should ERAF go away, this money would also be distributed back to the various general funds. He stated that bonding is essential to help finance very large long term projects. The amendment would allow all of the projects to be completed within a reasonable time frame, rather than stretching them out over a long period of time.

Mr. Glover addressed the second action before the Council this evening - Amendment No. 5. He stated that Amendment No. 5 involved extending eminent domain authority in the Monterey commercial corridor and the downtown area. He said that this authority is currently expired and that the potential

plan amendment would allow the use of eminent domain in this corridor for non residential projects only. He clarified that eminent domain would not be used on residential properties. He indicated that eminent domain could be a very important tool, if needed. Eminent domain is used as a last resort in order to make a project come about. He clarified that this is the only way eminent domain can be used under State law.

Council/Agency Member Carr stated that although his home is not located within the plan amendment area, it is located within 500 feet of the project area. He requested the City Attorney explain why he does not need to recuse himself from participating and voting on this item.

City Attorney/Agency Counsel Kern indicated that there is an exception contained in the Political Reform Act for persons who have residential properties within 500 feet of the project area. This section is entitled “The Public General Exception.” She clarified that if there are 5,000 individuals who are similarly situated and would be impacted the same way by this action, the Council/Agency Board member would be allowed to participate, if they do not have a conflict.

Council/Agency Member Sellers stated that he is one of the more than 5,000 individuals who resides within the project area. He indicated that he has gone through legal review to insure that he can in fact participate this evening.

Council/Agency Member Tate disclosed that he owns property within 500 feet from the project area. Therefore, the same exemption would apply in his case.

Council/Agency Member Carr referred to page 2 of the report (page 11 of the agenda packet) as presented to the Council/Agency Board. He requested an explanation of item 8 that states “Substantially balances the housing stock and the economic base of the community.”

Mr. Glover clarified that the 12 points contained in the report were inherited language from the original plan. It was his belief that this is generalized language to try and achieve a balanced community in terms of the City’s housing stock and its economic base, and not to become overly reliant upon one source of income or another.

Council/Agency Member Sellers said that at the time the original plan was adopted, there was a significant concern within the community that the City was quickly becoming a bedroom community, and that there were very few economic resources. Therefore, one of the justifications/reasons for establishing the redevelopment agency was to help spur economic development.

City Attorney/Agency Counsel Kern clarified that the elected officials sitting on the Dais are wearing two hats: as City Council Members and as the Redevelopment Agency Board. She stated that certain of the items are required actions of the Redevelopment Agency, other actions are required of the City Council, while the other items necessitate joint actions, including the public hearing. She identified the actions to be taken by the appropriate bodies: 1) approve the report and submit it to the City Council for its consideration as described by Mr. Glover and Mr. Toy (Agency action); 2) open the public hearing in order to allow public members to provide their input as to the proposed plan amendment (City

Council/Agency Board joint action); 3) certify the final EIR (Agency action); 4) certify the final EIR (Council action); 5) determination to be made on Amendment No. 4 as to which two detachment areas are to proceed (Agency action); 6) approve the ordinance relating to Amendment No. 4 which describes the financial changes with whichever detachment area is selected (Council action); and 7) consider Amendment No. 5 relating to eminent domain (Council action). Should the Council approve one or both of the ordinances, they would return to the Council on November 15, 2006 for final enactment. Within this time period, any written objections from property owners and taxing authorities received thus far, and during the public hearing process, would be responded to. The City would adopt written responses to the objections prior to taking to the Council final action on either of the two ordinances.

Mayor/Chairman Kennedy inquired as to the process, should the Council not wish to proceed with Amendment No 5, the eminent domain amendment.

City Attorney/Agency Counsel Kern responded that the Agency Board/City Council could discuss the amendment, but that the two bodies would be discussing the amendment prior to having benefit of the public hearing. It is possible for the Council to make a decision, but that it would be making it without benefit of public input. She clarified that a super majority vote would be required if the Planning Commission had not recommended approval. She noted that the Planning Commission recommends approval; therefore, it would only require a majority vote of the Council to pass the amendment.

Redevelopment Agency:

Action: *On a motion by Chairman Kennedy and seconded by Agency Member Tate, the Agency Board unanimously (5-0) **Approved** Redevelopment Agency Resolution No. MHRA-264, Transmitting Report to the City Council and the proposed Redevelopment Plan Amendments No. 4 and No. 5 from the Agency to the City Council.*

Mayor/Chairman Kennedy opened the public hearing.

Daniel Ehrler stated that the Chamber of Commerce has been involved with the proposed extension of the Redevelopment Agency for some time. The proposed Plan amendment was reviewed by the Chamber's Attraction & Retention subcommittee for several months, and was also reviewed by the Chamber's Economic Development Committee. There has also been a presentation made to the Chamber Board. It was his recollection that it was last June when the Board voted to unanimously support the extension of the Plan. This action was taken for many reasons: the Chamber believes the accomplishments of the RDA have been extraordinary and positive for the community; it is in response to the community's desires and wishes for what the community is to have; and enhances the quality of life. The proposed Plan amendment would allow the City to improve/install infrastructure, continue economic revitalization as well as providing for other needs in the community, and helping businesses to be successful. The Chamber believes it is imperative that the redevelopment plan be extended. He said that the issue of eminent domain inclusion came up at the first town hall meeting. While eminent domain is a part of what is being proposed, the Chamber Board did not have specific discussions about its inclusion. He indicated that there was a request of the Board that it discuss eminent domain and that the Board held this discussion at a recent meeting. He informed the Council that the Morgan Hill Chamber

of Commerce strongly supports the extension of the Redevelopment Plan, and recommends approval of Amendment No. 4. It is further recommended that the City includes detachment area 2; and believes that the inclusion of Cochrane Plaza is an excellent idea, and is very important to include. Regarding proposed Amendment No. 5, the Board had a thorough discussion about inclusion of eminent domain. He informed the Council that a majority vote was taken to recommend Council approval of Amendment No. 5, including eminent domain as a tool, as a last resort, in order to assist a project(s) to move forward.

Theresa Kiernan thanked the Council for placing Measure F on the November 7, 2006 ballot and congratulated the City on its successful passage. She informed the Council/Agency Board that the Downtown Association Board had a lengthy discussion regarding the proposed Plan amendment. The Board supports the Plan amendment, excluding eminent domain. This is based on the premise that the Board is looking forward to a more collaborative effort in working to resolve land issues between the desires of the City and individuals who own the property/businesses. She stated that eminent domain is considered a “negative connotative” method in dealing with the public. Despite the intention of wanting to move forward in doing good, the Board believes eminent domain comes with too much negativity for the Downtown Association to support its use as a tool with the Plan amendment.

Marby Lee expressed concern with eminent domain as it was an issue that came up in the election. It was her understanding that Council Members Tate and Sellers have indicated that they would not support the use of eminent domain. It was her hope that the Council would consider voting against eminent domain as part of the Plan amendment. She expressed concern with the \$150 million in bond measures for projects. She felt the public may want to know more about some of these projects; particularly the ones listed as “public facilities.” She indicated that she and other members in the community have expressed concern about operating and maintaining public facilities with Redevelopment Agency monies. She stated that she has heard concerns from some residents regarding how much affordable housing Morgan Hill needs. She understands that affordable housing is mandated as part of the Redevelopment Agency. She recommended the Council/Agency Board look into the concerns of the residents in the community.

Mayor Pro Tempore/Vice-chair Grzan said that the City may wish to proceed with a significant investment in the downtown. There may be a property owner who refuses to sell the property with the potential that refusal to sell the property may kill the entire project. He inquired whether Ms. Lee felt the use of eminent domain to be a possibility in this case.

Ms. Lee indicated that in the past, she stated her opposition to the use of eminent domain. Her concern is that at the end, the City would be taking property away from its owner. She said that she does not like having eminent domain being used as a tool, or being used as a threat.

Rocke Garcia, property owner within the Redevelopment Agency project area, stated his support of the Redevelopment Agency as it is important to recreate the downtown area. He indicated that the downtown supported the City for 80 years and that it was his belief that for the past 20 years, the City has not supported the downtown. He felt that it would be a forward step in taking the action of approving the plan amendment this evening. However, he stated his opposition to the use of eminent

domain. He said that he had a piece of property in the City of San Jose located adjacent to the Sharks arena in downtown San Jose. It took him two long years to fight the RDA and in filing a law suit against eminent domain. He retained the services of a great attorney and that he prevailed. However, he would like to have the two years he lost in going through the process of fighting eminent domain. He felt that it was important to provide lighting in the downtown; installing electroliers in order to encourage individuals to walk the downtown. He also felt it important that the City expend some monies to get the PL566 flood control project moving forward. He noted that the total dollars being discussed is approximately \$150 million and felt that this number is doable.

Jeanne Gregg indicated that she and her husband are owners of property located within the project area that would be subject to eminent domain consideration. She stated that she is not particularly concerned about her property. However, she felt that eminent domain is a very emotionally divisive issue in Morgan Hill, as it is nationally. She said that eminent domain is not popular with a lot of individuals. She did not believe the potential gain from having eminent domain would be worth the potential problems that could arise if it were used.

Gary Walton informed the Council that he owns property in the downtown. He stated that he supports the proposed Redevelopment Plan amendment as it is necessary for the City. Approval of the Plan amendment would allow dollars to be used for items that could not ordinarily be accomplished by a city of our size. He felt that the Redevelopment Agency Plan did a lot of good things for the City and would continue to do a lot of good things; particularly in the downtown. He stated his opposition to the use of eminent domain; indicating that there are other property owners in the downtown core in opposition as well. He informed the Council that there have been 30 states that have passed laws against taking properties for economic reasons and not for public reasons. In this last election, there were nine states with eminent domain initiatives with seven voting against the use of eminent domain. He felt it wrong to take property away from one person to give to another person because it was determined that another person could have better use of the property. He felt that this places a cloud over all properties when government has the authority to take property. He understood that eminent domain would not apply to residential properties. However, commercial purposes could be displaced and would have a cloud over property values. He did not know of anyone who would want to purchase properties that are subject to eminent domain where future council members could take properties away from an owner for economic reasons. He felt that it would be better for the City to try and develop a win-win situation for all properties such as in a public/private partnership.

Robert Pederson indicated that he is a business owner and property owner in Morgan Hill. He stated that he unfortunately was on the wrong end of 3 eminent domain cases: 1) with the state; 2) a metropolitan transportation district; and 3) with the City. He indicated that the eminent domain with the City was by far the worst because it was not done for the good of the public benefit, but was taken for the benefit of another individual/party. He commended the Planning Commission for listening to the people of Morgan Hill; separating the two issues.

Rich Jensen, a 30-year Morgan Hill resident, indicated that he received a notice signed by City Manager Tewes. Receiving this notice prompted him to ask some questions. He indicated that he did not want to go through the details of his questions this evening. He submitted his questions in writing and requested

that his questions be responded to in writing within 10 days. He indicated that there are a few things that bother him and his wife. He said that his children would have liked to live in Morgan Hill, but could not afford to do so. He indicated that his wife asks him how much longer they will reside in Morgan Hill on a daily basis. He felt that Morgan Hill is a great community. He stated that individuals who grew up in Morgan Hill have moved out of the area. He questioned the statement that the RDA does not increase taxes because he believes it does. He indicated that taxes keep being adopted. He stated that the intent of an RDA is to eliminate blight. He inquired as to what blight was eliminated in Morgan Hill. It was his belief that most of the RDA monies were used on bare dirt. He was confused as to the real purpose of the RDA.

Shanna Boigon, representing the South County Directors for the Santa Clara County Association of Realtors, informed the Council/Agency Board that the realtors are against eminent domain, but are supportive of the redevelopment agency plan as the City has done a good job in implementing programs.

Mark Madson, business/property owner, expressed concern that property values would go down with the use of eminent domain. He inquired whether a mixed use development with residential, commercial and/or retail uses would be excluded from eminent domain.

No further comments were offered.

City Manager/Executive Director Tewes said that the City has the responsibility of responding within seven days to all written objections that have been filed at the conclusion of the public hearing. He indicated that staff would be responding to Mr. Jensen's letter that the City received prior to the conclusion of the public hearing this evening. He noted that during the course of the hearing, a point was raised about affordable housing. He did not believe that Mr. Glover indicated, to a great extent, that redevelopment law requires the City to continue, as it has, to allocate 20% of the tax increment for a specific purpose. The specific purpose in the law is to increase or improve the supply of available housing to individuals of low or moderate income. He clarified that the 20% set aside is not necessarily to be used to build new housing, but can be used to improve the quality of housing for individuals of low and moderate income as the City has done in the past. He reminded the Council/Agency Board that a family of four meets the test of moderate income in Morgan Hill if they have a household income of \$120,000, or less. He indicated that each city and county in the State of California is required to adopt a housing element as part of their general plan; identifying how land use regulations and other regulations will be put into place to allow the construction of "affordable housing" to meet the need established by state law. One of the actions being proposed this evening is that the Council certify once again that the City's Housing Element complies with State laws. He stated the Measure C, an ordinance adopted by the voters, requires that a certain percentage of the allocations be set aside for the purpose of affordable housing.

City Manager Tewes addressed bonds. He said that there has been discussion, in the public hearing, about the use of tools. It was his hope that the Council and the Agency Board would not minimize the discussion when talking about tools. He said that the redevelopment plan would like to provide flexibility to solve the problems created by blighting influences in the core area of town. He said that the City would like to have the opportunity to use all of the resources and the available legal tools to address

these. This includes the tool of issuing long term debt that could be supported by the annual tax increment flow. He noted that the recommended action before the Council/Agency Board this evening would be to have the plan authorize long term debt to be accomplished in the future. The bond amount would be determined by a bonding underwriter and by specific actions of the Agency Board at the time specific projects are proposed to be financed. He clarified that the specific projects would need to be identified following a public hearing. He reiterated that all the Council/Agency Board would be doing in the recommended adopted action this evening is to provide the opportunity for the subsequent decisions to be made when specific projects are brought forth.

Mayor/Chairman Kennedy said that there are several examples where Redevelopment Agency funds were used successfully in Morgan Hill such as assisting the Woodland Mobile Home Park residents with being able to acquire their own park. The residents of the Hacienda Mobile Home Park were allowed to work out an arrangement with Millennium Housing to facilitate purchase of this park and help the residents with the upkeep, maintenance and affordability of the project. Another project was the Villa Ciolino project, a conversion of blighted mobile homes and apartments into a very nice residential live-in project. In addition, the Agency had home improvement funding used for many for the mobile homes and for housing projects in dire need of improvements. Redevelopment Agency funds were used to move forward with the teacher housing project located on Watsonville Road. He felt that this was a successful use of the 20% housing set aside funding. Therefore, the 20% housing set aside was not only used for new housing, but was helpful/successful in improving other projects where there was a great need.

Redevelopment Action:

Action: *On a motion by Agency Member Tate and seconded by Agency Member Sellers, the Redevelopment Agency Board unanimously (5-0) **Approved** Agency Resolution No. MHRA-265, Certifying Final Program Environmental Impact Report (FEIR).*

City Council Action:

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** Resolution No. 6060, Certifying the Final Program Environmental Impact Report (FEIR).*

Council/Agency Action

Action: *Council/Agency Member Tate made a motion, seconded by Council/Agency Member Sellers, to **Select** the recommended detachment area No. 2 as shown by staff.*

Mayor/Chairman Kennedy noted that the City has the Olin perchlorate site and that he previously asked why the Council/Agency Board could not include the Olin site in the new project plan. He requested the City Manager/Executive Director respond to this question.

City Manager/Executive Director Tewes indicated that Mayor/Chairman Kennedy inquired about adding land to the redevelopment plan project area. He explained that adding lands to the project area would require different procedural steps that should have been initiated many months ago if it was the City's intention to do so. If it is the concern about how this property, which has a contaminated "brown field" could be redevelopment, he said that the redevelopment agency has the authority, under a state agency, to assist this property and help clean up the property. He reported that the Regional Water Quality Control Board has given Olin a clean bill of health with respect to the dirt. Therefore, the dirt is considered to be clean. However, it is the groundwater basin that remains contaminated.

Council/Agency Member Sellers noted that the amendment would add a significant amount to the general fund on an annual basis in areas the City had some successes, and as discussed by the City's consultant. He felt it was a good recommendation to retain the Cochrane Plaza Shopping Center site. He was confident of their long term financial success, but that it gives the City flexibility to work with individuals to make sure that this is the case.

Council/Agency Member Carr said that in talking about the detachment area and all the information received, it was indicated that the City would receive monies into the general fund. The County would receive approximately \$1.1 million. However, he was not clear as to what would happen to the School District. It was his belief that detachment would result in an even trade; noting that the School District did not have any objections to the plan amendment.

Mr. Glover said that the tax increment the School District would be receiving would relieve pressure from the state general fund. Therefore, this would be a revenue neutral result to the School District. He said that in general, the State backfills School District revenues.

Vote: *The motion carried unanimously (5-0).*

City Council

Action: *Council Member Tate made a motion, seconded by Council Member Sellers, to **Introduce** Ordinance No. 1807, Making findings and approving and adopting Amendment No. 4 to the Community Development Plan of the Ojo De Agua Community Development Project.*

Council/Agency Member Tate said that the continuation of the extension of the Redevelopment Agency is being done with a fundamental understanding that there is to be a shift in what the City would be doing. He noted that the City implemented the Visioning Projects that evolved in the construction of a lot of public facilities. He acknowledged that the public facilities were constructed, and that the City continues to construct the library. He stated that some of these facilities placed some burden on the general fund, in terms of operation maintenance. However, the Council/Agency Board would be fundamentally moving forward with a plan amendment that would take the emphasis away from this. However, short term, the City still has public facilities as part of the plan. He felt this was justified because this is the point in time where the City's general fund could support additional facilities.

Council/Agency Member Carr reminded the Council/Agency Board that on October 4, 2006, it accepted a report from the Community & Economic Development Committee recommending an approach on how the City could utilize resources from an extended RDA. It was recommended that efforts be focused on specific areas of town, with the downtown being one of the areas. He felt that efforts would be placed on construction and installation of public improvements and infrastructure within the project area. This would become the main focus as opposed to public facilities. He felt that the extension of the RDA would be about improving the infrastructure and installing public improvements. He recommended the Council/Agency Board keep reminding itself about this fact. He noted that it was mentioned, at the beginning of the report, that this is a process that the Council and staff have been engaged in for approximately 20 months. Although it may appear that things are moving quickly this evening, and that there have not been a lot of questions asked by the Council/Agency Board; this is attributed to having numerous public opportunities for the Council/Agency Board to be asking questions and receiving additional information to what it means to extend the RDA. He indicated that the Council/Agency Board received a lot of information about the three town hall meetings conducted as well as the questions asked at said meetings. Therefore, the Council/Agency Board were provided information about concerns expressed by individuals and where the direction was headed with the public comments. The Council/Agency Board has undertaken a long and methodical process to get to where it is this evening. He confirmed that the redevelopment agency has removed blight in Morgan Hill by improving housing and providing appropriate affordable housing as it is an important goal that has been supported in Morgan Hill; something that he strongly supports and will be an emphasis as the City continues with the RDA.

Council/Agency Member Sellers said that one of his first actions on the Council was to approve the previous extension of the redevelopment agency. At that time, the Council/Agency Board took two actions: 1) eliminated eminent domain; and 2) the City's borrowing ability. He stated that it made financial sense to include borrowing as a tool available to the Agency Board. One of the things the Agency Board has done successful, as a redevelopment agency, was to spur significant private development. He felt that there is benefit to having the ability to make a significant public investment upfront that can be matched by the public sector in such a way that it comes together to create a community. Bringing housing into the community is a significant part of why you want to have this flexibility

Mayor/Chairman Kennedy addressed flood control. He depicted a map of the FEMA flood zone that affects most of downtown Morgan Hill. He stated that for many years Morgan Hill has suffered from heavy rains and that the downtown floods because of the inadequate drainage capability of Llagas Creek. He indicated that the City has been pushing the federal government and congress members to get the PL566 flood project funded. He said that the City has had to commit a certain amount of funds to keep the PL566 project moving forward. He felt that the extension of the redevelopment agency would provide the critical funds needed to keep the flood control project moving forward. He said that another project he has wanted to complete is the installation of sidewalks on West Dunne Avenue, from Monterey Road to Peak Avenue because it is a safety condition. He said that there are a series of infrastructure projects similar to the sidewalk project that need to be completed and are a part of the proposed plan amendment (e.g., street improvements, sidewalks, flood control, water, sewer, etc.). He stated that he is supportive of moving forward with the plan amendment.

Mayor Pro Tempore/Vice-chair Grzan felt that the RDA has served the community well. He felt it time to take the RDA dollars and use monies to build the City's infrastructure in order to provide safe streets, roadways, and other items needed to encourage the type of economic development needed to support City projects. He stated that he will support the motion in order to bring good projects into the community.

Vote: *The motion carried unanimously (5-0).*

Discussion regarding Amendment No. 5 relating to eminent domain

Council/Agency Member Tate stated that a decision on eminent domain was not an easy one to make. If you look at the question of eminent domain rationally, weighing the pros and cons; you give thought to looking at what project(s) you can put together and cause it/them to happen. He said that you can only hope that everyone will be rational and only use eminent domain under the most extreme condition. He talked himself into believing that the Council/Agency Board will not use eminent domain; and therefore would support including eminent domain. However, this stopped making sense after a while. He noted that there is a lot of emotion associated with eminent domain, and that you come to the conclusion that it is not worth the amount of chaos it would cause in the community. He noted that the City has survived many years without eminent domain. He felt the City could move forward with the plan amendment without eminent domain. He stated that he would not be supporting the inclusion of eminent domain.

Council/Agency Member Sellers said that a few years ago, the City conducted a survey that resulted in a significant majority of the community believing that the RDA was doing a good job, and that they were supportive of its continuation. He stated that the public has placed its trust in the Council/Agency Board's ability to act rationally/in a reasonable way, and to use the redevelopment agency as it was intended to be used for doing good things for the community. He stated that it was vital for the Council/Agency Board to have the trust of the community, and felt that eminent domain would take away the trust citizens have in its elected officials. He said that he would like to retain the trust of the citizens and will therefore, not support the use of eminent domain this evening.

Mayor/Chairman Kennedy said that Theresa Kiernan stated that it was not worth adding the additional problem in moving forward with the plan and creating a division in the community; noting opposition to include eminent domain in the process. Therefore, he would not be supportive of including eminent domain in the redevelopment agency plan amendment.

Council/Agency Member Carr stated that he has a fundamental belief that every property owner has a right to the economic value of their property, as well as control of their property. However, each one of the individual parcels that make up a community may struggle and make it difficult for government to balance the needs of the community and individual property rights. He noted that Council/Agency Member Tate stated that he would like to move forward with the idea of a collaboration effort. He said that he read the notes and the questions asked by individuals who want to try to understand the issues. He was pleased that Ms. Kiernan represents a group of individuals who own property within the eminent domain area. He was also pleased to hear that downtown property owners are willing to work with the RDA, and will not stand in the way of moving forward with improvements to the downtown and

improvements that the RDA may bring forward. Further, that the downtown property owners would be bringing this to the table in alignment with their opposition to eminent domain. He will challenge the property owners to stand up in their role of partnering with the City in improving the downtown, and not just ask for handouts from the RDA. He said that the goal(s) of extending the RDA plan is far more important than having the tool of eminent domain.

Action: ***No action taken** on Amendment No. 5 to the Community Development Plan of the Ojo De Agua Community Development Project.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 9:05 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY